IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.177 of 1991

Shetkari Sahakari Sakhar Karkhana
Ltd. Sangli ... Appellant
(Orig.plff)

V/s

1. Manikrao Dattajirao Sawant
2. Appasaheb Balasaheb Patil
3. Kalgonda Rajgonda Patil ... Respondents
(Orig.Defts 1 to 3)

Shri S.G.Page for Appellant
Shri N.D.Hombalkar with S.R.Rajeshirke for Respondents

CORAM:S.R.SATHE,J.
DATED:8th June 2006

**ORAL JUDGMENT** :-

1. Being aggrieved by the judgment and order passed by the Court of 3rd Additional District Judge, Sangli in Regular Civil Appeal No.463 of 1982, the Appellant original defendant no.1 has preferred this appeal. The facts giving rise to the present appeal are as under :-

2. The plaintiff - Shetkari Sahakari Sakhar Karkhana Ltd. Sangli, gave a contract for fabricating and erecting trusses for the roof of boiler house to the defendant no.1 by executing an agreement. Defendant nos.2 and 3 stood as guarantors for the said agreement. The trusses were to be prepared as per specification given by the plaintiff factory. It is plaintiff's case that the defendant no.1 prepared only one truss and the same could not be fitted and as such it was of no use. As a result of the same, the defendant no.1 abandoned the contract and plaintiff factory was constrained to get the work completed on their own. For that purpose, they incurred cost of material to the tune of Rs.7500/- and labour charges of Rs.3200/- for getting fitted old trusses and to prepare new trusses. They also paid Rs.1500/- to the defendant no.1 towards advance. Thus, as the work was got done by the factory separately and not through the defendant no.1, the plaintiff factory filed suit for recovery of the amount of Rs.13,700/- against the defendant nos.1 to 3.

3. The defendant no.1 filed written statement and opposed the suit claim vide Exh.26. He contended that drawing provided to him was in fact defective. He in fact prepared the trusses as per specifications. He had also brought the defect in drawing to the notice of the plaintiff but no heed was given to it and as a result of the same the work could not be completed and

for that he was not responsible. He, therefore, submitted that plaintiff is not entitled to recover the amount as claimed.

4. Both the parties adduced evidence. After considering the said evidence the learned Civil Judge, S.D., Sangli came to the conclusion that the plaintiff is entitled to recover Rs.7500/- towards cost of the material that become useless after being used by the defendant no.1 and Rs.1500/-, which were paid to the defendant by way of advance. Hence decree for Rs.9,000/- was passed.

5. Being aggrieved by the said judgment and order, the original defendant no.1 has filed the present appeal.

6. At the time of admission of the appeal, this Court (Coram:A.A.Desai,J.) passed the following order.

> "Heard. Admit on ground nos. 6, 7 and 8"
> The said grounds are as under :-
>
> 6. Whether the lower appellate judge has committed an error of law apparent on the face of the record while recording his finding on point no.3 famed by him for determination?

7. Whether the lower appellate Judge has committed an error of law in wrongly considering that the decree awarding Rs.7500/- in favour of the appellant plaintiff by the learned trial Judge was towards damages for abandoning the contract by the defendant no.1?

8. Whether the lower appellate Judge has committed an error both of law and fact in holding that the evidence adduced by the appellant-plaintiff in regard to the claim for Rs.7500/- for the waste material is contrary to the claim itself?

7. It is not in dispute that the defendant no.1 had undertaken the work of preparing 3 trusses as per the specification of the plaintiff factory and the work was to be carried out at the site. It is also not in dispute that truss that was prepared by the defendant could not be fitted to the object which was prepared and as a result of the same ultimately the contract was abandoned by the defendant and the plaintiff was required to prepare new tussues. It is the case of the plaintiff that amount of Rs.7500/- was required for preparing new trussues.

8. The trial Court as well as the learned first

Appellate Court have held that trussues prepared by the defendant were in fact not as per specification. Shri Page, learned Advocate for the Appellant strenuously argued before me that the courts below have held that truss was not as per specification. He therefore submitted that whatever loss is caused that has to be recovered from the defendants. However, while considering this aspect we have to see the pleadings of the parties.

9. It is very clear that the plaintiff has specifically made out a case that as a result defendant's failure to carry out the work, the plaintiff was required to use material worth Rs.7500/-. Naturally, it was necessary for the plaintiff to adduce specific and cogent evidence to show that he paid or purchased separate material for Rs.7500/- and was put to additional cost to that effect. However, from the material on record it is very clear that the plaintiff factory did not adduce any cogent evidence in that behalf. On the contrary their witness Anant Mohite, Engineer, has stated that the factory employed staff and erected and fixed the trusses. He was not even in a position to state that whether the material brought by the defendant no.1 was again used or not. Considering this aspect, the first appellate court rightly held that the plaintiff did not adduce sufficient evidence to show that amount of Rs.7500/- was actually required to be spent by them

for purchasing additional or new material. So, on this ground alone the learned first appellate Court held that plaintiff is not entitled to get an amount of Rs.7500/-. It is needless to say that plaintiff must stand or fall on his own pleadings and evidence. As there was no specific evidence for expenditure of Rs.7500/- it cannot be said that the first appellate Court committed any error in recording the finding that the plaintiff is not entitled to recover amount of Rs.7500/-.

10. So far as the claim for the amount of Rs.1500/- which was given by way of advance is concerned, it must be noted that this is not a case where after paying the advance, the defendant has kept mum and has not used the same for purchase of material. On the contrary, it does appear from the record that the defendant no.1 utilised the said amount of Rs.1500/- for purchase of material and even at the time when plaintiff got prepared new truss the same material has been used. So, under such circumstances it cannot be said that the plaintiff is entitled to recover amount of Rs.1500/-.

11. An attempt is made on behalf of the plaintiff to show that the plaintiff factory is required to spent certain amount towards labour charges. However, the record shows that document in that behalf is not properly proved and admitted in evidence. So, there

is no material to show that particular amount was required to be spent by the plaintiff towards wages as the defendant did not complete his contract.

12. Thus, it appears that the first appellate court has rightly considered the entire evidence on record and has correctly allowed the appeal and dismissed the plaintiff's claim. There is no error of law. In fact, there is no substantial question of law is involved in the matter. The entire objection of defendant No.1 to first appellate court judgement is that evidence is not properly appreciated. However, from the perusal of the record it is clear that findings of the first appellate court are based on evidence on record. Findings of facts are not perverse.

. Hence the appeal is dismissed with costs.

( S.R.SATHE,J.)